

Sun Refining and Marketing Company and Sun Marine Licensed Officers Association. Cases 4-CA-16327 and 4-CA-16810

February 8, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On April 20, 1990, Administrative Law Judge Richard L. Denison issued the attached decision. The General Counsel filed exceptions, a supporting brief, and an answering brief. The Charging Party filed exceptions and a supporting brief. The Respondent filed a brief in opposition to the exceptions as well as cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²The judge found, and we agree, that the Respondent's second mates, third mates, first assistant engineers, second assistant engineers, and third assistant engineers are supervisors within the meaning of Sec. 2(11) of the Act. We note that the judge, in setting forth his concluding findings, did not explicitly rely on his factual finding that the ship's officers at issue "have and in fact exercise the authority to authorize and assign overtime." In adopting the judge's decision, we rely on that finding in addition to the judge's findings with respect to discipline and responsible direction, on which he did rely for his legal conclusions.

Carmen P. Cialino Jr., Esq. and Barbara A. O'Neill, Esq., for the General Counsel.
Anthony B. Haller, Esq., Robert H. Barron, Esq., and J. Anthony Messina, Esq. (Pepper, Hamilton & Scheetz), of Philadelphia, Pennsylvania, for the Respondent.
Warren J. Borish, Esq. and James F. Runckel, Esq. (Spear, Wilderman, Sigmond, Borish, Endy & Silverstein), of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on December 2 and 3, 1987, and January 25 through 29 and March 7 through 11, 1988. Based on charges filed January 14 and

September 3, 1987, the consolidated complaint, issued October 28, 1987, as amended, alleges that the Respondent, Sun Refining and Marketing Company, has violated Section 8(a)(5) and (1) of the Act in that, at all times since on or about November 12, 1986, Respondent refused to recognize and bargain with the Charging Party, Sun Marine Licensed Officers Association, concerning the terms and conditions of employment of first assistant engineers, second assistant engineers, third assistant engineers, second mates, and third mates, which are classifications of employees within the previously recognized bargaining unit. It is further alleged that on or about March 5, 1987, following the expiration of the collective-bargaining agreement on March 4, the Respondent further violated Section 8(a)(5) and (1) by making unilateral changes in wages, benefits, and promotion and vacation procedures.

The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint.¹ Respondent admits that it formally withdrew recognition of the Union (which had never been based on a Board certification) after expiration of their most recent agreement covering, *inter alia*, the employees in question. However, Respondent contends that the contractual bargaining unit was and is inappropriate and its actions were justified, in that the employees in issue are supervisors within the meaning of Section 2(11) of the Act. Furthermore, Respondent maintains that these employees regularly substitute for those in higher positions which are conceded to be supervisory. Finally, the Respondent concedes that it notified the Union in early January 1987 that it planned to make certain of the unilateral changes alleged, but that its actions in implementing these changes were legally justified by the circumstances presented.

On the entire record in the case, including over 2100 pages of transcript, approximately 2100 pages of exhibits, consideration of approximately 300 pages of briefs and associated materials filed June 10, 1988, and my observation of the witnesses, I make the following²

FINDINGS OF FACT³

I. JURISDICTION AND LABOR ORGANIZATION

Based on the allegations in paragraphs 3 and 4, respectively, of the consolidated complaint, as amended, the admissions in Respondent's answer, and the stipulation of the parties at the outset of the hearing, I find that the Respondent

¹Respondent also asserts an affirmative defense to the charging Case 4-CA-16810, i.e., contending it is barred by Sec. 10(b) of the Act in that it was filed more than 6 months following the announcement of the proposed unilateral changes. I find this defense is without merit since these changes are a consequence of Respondent's withdrawal of recognition from the Union, and are thus sufficiently closely related to the initial charge in Case 4-CA-16327 to overcome the statutory bar. *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959). Cf. *Nickles Bakery of Indiana*, 296 NLRB 927 (1989); *Van Dyne Crotty Co.*, 297 NLRB 899 (1990).

²Respondent's unopposed motion to correct the transcript as specified in that motion is granted.

³The facts set forth here are based on a composite of the credited aspects of the testimony of witnesses, the exhibits, and consideration of the logical consistency and inherent probability of the facts found. Although I may not, in the course of this decision, refer to all the evidence, it has been weighed and considered, and to the extent that testimony or other evidence not mentioned here might appear to contradict the findings of fact, it has not been disregarded, but has been rejected as incredible, lacking in probative worth, unpersuasive, surplusage, or irrelevant. In those instances where I may not have specifically detailed who I have credited, it is clear from the narrative who has been credited.

is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I likewise find that the Charging Party (the Union) is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. INTRODUCTION

The Respondent is a Pennsylvania corporation based in Aston, Pennsylvania (otherwise known as Marcus Hook), where it engages in the business of transporting, refining, and marketing petroleum products. Under the auspices of Sun Transport, Inc., Respondent operates on a worldwide basis three fleets of oceangoing vessels carrying crude oil, various petroleum products, and at times other cargoes to various ports around the planet. The efficient and profitable operation and administration of the foreign flag fleet, tug and barge fleet, and American flag or U.S. fleet is the responsibility of Captain John H. Bates, manager of fleet operations for Sun Refining and Marketing and vice president of Sun Transport, who credibly testified at length concerning the Company's structure, vessels, procedures, and the duties of employees serving in the categories in issue in this proceeding. Only Respondent's U.S. tanker fleet is the subject of this case. Immediately subordinate to Bates is East Coast Fleet Manager Captain Howard L. Ellwanger and West Coast Fleet Manager R. L. Mellen. As of January 1, 1987, the east coast fleet was composed of the following tanker vessels:

The *S.S. New York Sun*, valued at \$45 million, is 600 feet long with a beam of 90 feet, and weighs 34,000 deadweight tons (dwt). It operates from the Gulf of Mexico to various ports on the East Coast.

The *S.S. Western Sun*, valued at \$2 million, is 645 feet long by 82 feet, and weighs 30,000 dwt. It operates out of Sun Terminal, Respondent's Delaware headquarters, to the Gulf of Mexico and the east coast ports of Charleston, South Carolina, and Jacksonville, Florida.

The *S.S. Texas Sun*, valued at \$10 million, is 749 feet long by 102 feet, and weighs 53,000 dwt. It likewise operates out of the Gulf of Mexico to ports on the east coast.

Finally, the *S.S. Tropic Sun*, valued at \$7 million, is a 600-foot by 85-foot 34,000 dwt. vessel operating from Puerto Rico to Respondent's base at Marcus Hook, Delaware.

The west coast fleet is composed of the following:

The gigantic *S.S. Prince William Sound*, valued at \$32 million, is an 870-foot by 132-foot supertanker operating between the Gulf of Alaska and ports in California and Washington State.

The *S.S. American Sun*, valued at \$12 million, is 818 feet long with a beam of 125 feet, and weighs 80,750 dwt. It also operates between Alaska and California and Washington ports.

The *S.S. Philadelphia Sun*, valued at \$34 million, is 600 feet long by 90 feet wide, weighs 34,000 dwt. It is a sister ship of the *New York Sun* and is utilized on short runs on the west coast.

The profitable operation of the vessels listed above also includes chartering them for use by other companies. At the time of the hearing in this matter, only the *Tropic Sun* and the *Western Sun* were actually fulfilling the needs of Sun Refining. The remainder of these vessels were chartered. As such, they sail to whatever ports required by the customer. However, the crews of these chartered vessels are Sun em-

ployees whose activities are governed by Sun's policies commensurate with the charter contract which Sun has negotiated with the customer.

Consistent with United States Coast Guard regulations, as of January 1, 1987, the *New York Sun* and the *Philadelphia Sun* utilized a crew of 22, including officers. On board each of these two vessels were a master (or captain), chief mate, second mate, third mate, able-bodied seaman/boatswain, five other able-bodied seamen, chief engineer, first assistant engineer, second assistant engineer, third assistant engineer, three oilers, a radio officer, a steward, a cook, and two messmen. All the other vessels except the *Western Sun* carried a crew of 27. In addition to the numbers and classifications of employees referred to immediately above, these ships employed three ordinary seamen, a pumpman, and a wiper. The *Western Sun* was operated by a crew of 30, resulting from the necessity of carrying three firemen in addition to the crew complement employed on other vessels.⁴ As of January 1987, Respondent's U.S. flag fleet employed 115 licensed officers and 185 employees in unlicensed categories.

Members of the unlicensed crew are not permanently assigned to any particular vessel for any specified length of time. Junior officers are regularly moved from vessel to vessel in order to enhance their experience. On the other hand, the captain, chief mate, and chief engineer generally receive long-term assignments. These assignments, as well as the assessment of evaluations and promotions and the administration of further consequences of imposed shipboard discipline, fall within the administrative responsibilities of Bates and his east and west coast fleet managers.⁵ Assisting top management in the performance of these burdensome and time-consuming functions is Respondent's personnel department, officially designated the human resources department,⁶ presided over by Manager of Human Resources Hugh Lewis Simmons. Under Simmons' direction, assistants, called fleet staffers, make assignments to vessels, assessments of written evaluations of licensed and unlicensed personnel submitted by the ships' captains, recommendations concerning the hiring of licensed and unlicensed applicants, and recommendations concerning promotions, and the disposition of discipline. The tentative decisions made by Simmons and his staffers are subject to the review and veto of the respective fleet managers and, ultimately, when he deems it necessary, by Captain Bates himself.

Since 1939, Respondent has had a collective-bargaining relationship, initiated through voluntary recognition without certification, with the Sun Marine Licensed Officers Association resulting in a series of contracts covering a unit including chief mates, chief engineers, second mates, third mates, first assistant engineers, second assistant engineers, third assistant engineers, and radio officers.⁷ The last such collective-bargaining agreement expired on March 4, 1987, at

⁴The *Western Sun* was sold in January 1987. Since that time no firemen have worked on Sun's U.S. fleet ships. Furthermore, effective during the summer of 1987, the *New York Sun* and *Philadelphia Sun* have been sailing with two oilers instead of three.

⁵The correct title "Fleet Manager" also appears in the transcript as "Port Manager" or "Port Captain."

⁶There are three other departments which, together with the human resources department, comprise Respondent's marine operations division. They are the financial department, the technical services department, and the business development and planning department.

⁷The supervisory status of radio officers is not in issue in this proceeding.

which time, pursuant to advance notice served on December 30, 1986, the Respondent admittedly notified the Union that it intended to withdraw recognition of the Union as the exclusive representative of all licensed officers except radio officers, on the ground that they were supervisors within the meaning of the Act. Following this action, Respondent concedes that it made various changes in the terms and conditions of employment of its licensed officers, which it contends it was free to do because of the supervisory status of these employees. Following the investigation of the Union's charges, the Regional Director, in partial agreement with the Respondent's position, declined to include chief mates and chief engineers in the allegations of the complaint in this proceeding. Counsel for the General Counsel concedes that chief mates and chief engineers are supervisors within the meaning of Section 2(11) of the Act and, further, that if the licensed officers in the disputed categories are also supervisors, the unilateral changes made by the Respondent are lawful and the entire complaint should be dismissed. Thus, the issue of whether second and third mates and first, second, and third assistant engineers are supervisors within the meaning of the Act is the crucial threshold issue.

III. THE SUPERVISORY STATUS OF SECOND MATES, THIRD MATES, FIRST ASSISTANT ENGINEERS, SECOND ASSISTANT ENGINEERS, AND THIRD ASSISTANT ENGINEERS

A. A General Description of the Duties and Responsibilities of Each of the Classifications of Licensed and Unlicensed Employees on Respondent's Vessels as Set Forth in Respondent's Policy Manuals

Respondent's Deck Fleet Policy Manual and its companion Engineer Fleet Policy Manual outlines the duties and responsibilities, respectively, which Respondent places on its masters and deck officers, and the engine department staff on its vessels. As stated therein, these documents are intended to assist these officers in the safe and efficient operation of the vessel and, to the extent feasible, to standardize fleet operations. Copies of these manuals are in each officer's room on the ship, on the bridge, and in the engineroom office. Accordingly:

The master (captain):

... is responsible for the safety of the vessel, its cargo, equipment and for all persons legally on board. He has supreme command of the vessel with full authority and responsibility over all phases of its operations, both in port and at sea. The Master's orders are to be obeyed in spirit and letter, by all persons on board.

...
The Master is the direct representative of the Company. As such, his decisions and actions are binding on the Company. He is to ensure that Company interests are protected at all times. These responsibilities and authority impose upon the Master a duty to study and know his vessel thoroughly. He is to impart this knowledge to his subordinates.

...
In the Master's absence the Senior Deck Officer on board is to assume temporary command. This officer,

while in charge, has authority to issue any orders which the Master would normally issue. The officer temporarily in charge is accountable to the Master and to the Company.

...
The Master is fully responsible for the safe navigation of the vessel at all times. Safe navigation is foremost in the Master's command responsibilities.

...
Safe navigation depends on the combined skill of the Master and his Watch Officers. Sound navigation practices are to be followed at all times.

...
The Master is to be on the bridge as follows:

When the vessel must pass in the vicinity of shoals, outlying rocks or other hazards to navigation.
In periods of restricted visibility.
When there is heavy traffic in the ship's vicinity.
When steaming in restricted waters.
During conditions of heavy weather.
When entering or leaving port.
When docking or undocking the vessel.
When shifting berth.
When embarking or disembarking a Pilot.
When anchoring or weighing anchor.
At other times the Master judges his presence on the bridge to be necessary.

The chief officer (chief mate) "is responsible to the Master for the administration and supervision of the Deck Department. He is to perform these duties in accordance with these regulations and as directed by the Master The Chief Officer is next in command of the ship and in charge in the Master's absence or incapacity. He is responsible for maintaining the discipline of personnel in the Deck Department. He is to make a prompt, unbiased report to the Master of any breach of discipline on the part of any member of the Deck Department. He is to plan and supervise the work to be done by the deck force so that precedence will be given to items most necessary for safety and preservation. He is to personally supervise any work which is potentially hazardous and to see that all safety precautions are observed The entire cargo and ballast operation is the Chief Officer's responsibility, i.e., tank preparation and cargo loading, discharging, transferring, sampling and training of personnel in cargo and ballasting operations."

The second mate (second officer) "is next in authority to the Chief Officer, and is expected to be familiar with and able to perform the Chief Officer's duties as may be required." The second mate is the navigation officer. As such he "is responsible for the care of all navigational equipment. He is to report any malfunction or failure of this equipment to the Master." He is therefore responsible for the care and proper functioning of chronometers, clocks, magnetic and gyro compasses, gyro repeaters, course recorder, radar, radio direction finder, omega, decca navigator, and loran and satellite navigation equipment.

The third mate (third officer) "is next in authority to the Second Officer. He is expected to be familiar with and able to perform the Second Officer's duties as may be required The Third Officer is responsible for the care and upkeep of the ship's visual signaling equipment. This includes

all flags, blinker lights, search-lights, distress lights and flares. He is also responsible for maintaining an up-to-date International Code of Signals Book.”

The chief engineer is the “manager” of the engine department. He “is responsible for the condition, efficient operation and availability of the ship’s mechanical and electrical machinery. He is responsible for carrying out the manufacturer’s instructions as closely as possible in the operation and maintenance of all machinery, as well as complying with company issued guidelines. At all times, the Chief Engineer is to direct his staff in the completion of work outstanding while continuously remembering the need for safety and economy. He is to use every opportunity to keep work progressing within the company orders. As may be limited by port regulations, he is to seek the maximum notice from the bridge for use of machinery. He is to insure that his officers are properly informed of their duties and, by his own example and examples set by his officers, improve the skills of the department staff.” He is responsible for the proper completion of both scheduled preventive maintenance and emergency repairs. “The Chief Engineer is to delegate authority as appropriate for proper and complete functioning of the department as well as to prepare departmental personnel for greater responsibility and promotion The Chief Engineer is to prepare and forward evaluation reports covering all engineering officers and unlicensed personnel on the forms prescribed These evaluations of unlicensed engine personnel may be assigned to other engineering officers All engine officers are responsible to the Chief Engineer (who reports to the Master) and are to carry out lawful orders of either.” They are to protect “ship’s property against loss, damage or wasteful practices by any crew member.” Among their other responsibilities they are answerable “to the Chief Engineer for standing a proper watch underway and in port.”

The first assistant engineer is the engineroom boss. He “is deputy to the Chief Engineer and is his primary assistant. When so authorized by the Chief Engineer, the First Assistant is to arrange the efficient allocation of manpower available to insure its full employment within the ordinary working hours. He also is to insure that correct procedures are carried out. To these ends, the First Assistant is to instruct and direct the subordinate engineers and petty officers in their duties and use them as far as he judges them suitable If the Chief Engineer is unable to perform his duties, the First Assistant Engineer is to assume the Chief Engineer’s position, with the Master’s approval, until otherwise directed by the main office The First Assistant is to inform the Chief Engineer of any circumstances that he considers unusual as they occur and of any significant changes in the state and the availability of machinery The Second Assistant Engineer is his deputy and the First Assistant is to train him in the duties of the First Assistant Engineer. The First Assistant is to use the less skilled men on simple mechanical work as well as on training tasks under the supervision of an engineer The First Assistant Engineer or his designatee is to direct the efforts of day workers.”

The second assistant engineer “is responsible to the Chief Engineer for the maintenance and condition of the boilers, fireroom auxiliary machinery, soot blowers and water regulators and other equipment as may be assigned.”

The third assistant engineer “is responsible for the maintenance, operation and cleaning of the lubrication oil purifier, changing and cleaning the main engine and auxiliary generator lubrication oil strainers at intervals specified by the Chief Engineer. He is responsible to the Chief Engineer for the maintenance of fire-fighting and safety equipment in the engine spaces.” He is also the ship’s electrician. In this capacity he is responsible for the cleaning, maintenance, and repair of all electric motors and other electrical equipment.

The unlicensed deck crew is composed of ordinary seamen and able-bodied seamen, who perform such duties as tying up and untying the ship at the dock, chipping and painting, and serving as a lookout in bad weather when needed, all under the direction of licensed officers. An experienced seaman may be called upon, if qualified by training and experience, to steer the ship. A senior and experienced able-bodied seaman is called a quartermaster. The bosun is an experienced deck crewman who performs duties similar to a working leadman.

The unlicensed crew in the engineroom is composed of wipers and oilers. A wiper is a dayworker in the engineroom performing painting and cleaning duties there as assigned by either the chief engineer or the first assistant engineer. He may also be called on, when needed, by other engineering officers in need of assistance. An oiler works in the engineroom performing daily work scheduled by the chief engineer. He also has an assigned cleaning station to maintain. The oiler makes rounds checking gauges and examining machinery to ensure proper performance of the equipment. These rounds are made at the beginning and end of his watch, and hourly in the interim. He is expected to be the watch officer’s right-hand man and must assist him in accordance with the watch officer’s orders.

B. Significant Differences Between the Officers and the Crew

Since 80 consecutive days usually constitutes a tour of duty on Respondent’s vessels, during which time several trips between ports are made, the maintenance of discipline and the efficient and safe operation of the vessel requires the maintenance of a stratified shipboard society. Crewmembers sign shipping articles on boarding the vessel, thereby agreeing to be obedient to the lawful commands of superior officers.⁸ To become a licensed officer the candidate must pass a demanding United States Coast Guard examination. The candidate may prepare himself for this event by either serving a minimum of 3 years on an oceangoing vessel or by obtaining a Bachelor of Science degree from one of a number of naval academies in the United States. On the other hand, it is not unusual for unlicensed crewmembers to join a vessel without any experience in the entry level capacities of either a wiper or an ordinary seaman. Accordingly, their wages and benefits are less than that of licensed officers. There are other obvious differences. Officers eat in a different mess hall, and have better living quarters cleaned and maintained by a messman. Crewmen share inferior facilities which they themselves are required to maintain.

⁸I am not impressed with the testimony of Quartermaster Christopher Flouton who minimized the seaman’s obligation to obey officers’ orders to an extent not supported by other witnesses.

C. *The Watch System*

The complexity and nature of work aboard an oil tanker requires continuous operation on a 24-hour basis. This is accomplished by dividing the workday into six 4-hour shifts known as watches. Crewmembers who are unlicensed report to the watch officer for the watch to which they are assigned, and must follow his orders. With respect to the deck department, the chief mate stands watch 4 to 8 a.m. and 4 to 8 p.m.; the second mate has the 12 to 4 a.m. and 12 to 4 p.m. watch, while the third mate is on watch from 8 a.m. to 12 p.m. and 8 p.m. to 12 a.m. In the engine department the first assistant engineer has the 4 to 8 watch, the second engineer the 12 to 4 watch, and the third assistant engineer the 8 to 12 watch. Crewmembers are assigned to a watch by the ship's officers. The master and the chief engineer do not stand watch, mainly because each has many administrative and recordkeeping duties which require that much of their time be devoted to paperwork in their respective offices.

D. *The Duties and Responsibilities of Watch Officers*

Each of the watch standing officers who comprise the categories whose supervisory status is in issue in this proceeding, has special duties and responsibilities as watch officers which reach well beyond the individual responsibilities described earlier in this decision. Thus, it is in the area of their watch-keeping responsibilities that scrutiny must be exercised in assessing the alleged supervisory status of these officers.

1. Deck watch officers

During a watch at sea the deck officer is responsible for the safe navigation and operation of the vessel, and the safety of its personnel and cargo. He must constantly assess the navigation situation by monitoring compasses, navigational equipment, radar, weather, and traffic. Appropriate entries of this information are regularly recorded in logbooks by the watch officer. Respondent's Deck Fleet Policy Manual specifically instructs deck watch officers to utilize their best professional judgment in operating the vessel in accordance with the general standing orders or bridge orders posted on the bridge by the master. Although the deck watch officer is required to call the master if he has any doubt concerning these standing orders or with respect to a given situation with which he is confronted, in actual practice, during a given watch, the master is rarely if ever called in the open sea. Instead, the deck watch officer, as instructed by the manual, exercises his own judgment and issues his own orders concerning the vessel's operation. While the course of the vessel is set pursuant to the master's orders, the deck watch officer is expected to and does change course when necessitated by ocean traffic, adverse weather conditions, or other factors which may affect the safety of the vessel. The deck watch officer decides whether to continue proceeding under automatic steering or switch to manual steering while maneuvering, coming in and out of port, and in dealing with emergencies. In daytime he is normally on the bridge alone. However, there are two able-bodied seamen and an ordinary seaman usually assigned to report directly to the watch officer. Although these seamen are normally part of the daytime deck crew utilized for such tasks as chipping and painting or other necessary work led by the bosun, the watch officer may sum-

mon from this work crew a quartermaster assigned to his watch for the purpose of steering on the advent of foul weather or other dangerous conditions. In such situations he will also post a lookout or lookouts from among this crew. Within the scope of his standing orders the watch officer will decide when such postings are necessary, using his judgment and experience. The helmsman and posted lookout must follow the watch officer's orders. The watch officer may not leave the bridge until properly relieved. On the approach of bad weather he will issue orders dispatching seamen to secure hatches and doors to preserve the watertight integrity of the vessel in rough seas. In dangerous conditions he has the authority to and will order deck work to be discontinued. If called for, the watch officer may assign other tasks to crewmembers working on his watch and may call for assistance from other crewmembers off watch if necessary. Crewmen are required to follow the orders of the watch officer. The watch officer monitors the work being performed on deck by the work crew, and issues orders to ensure such work is being properly and safely performed. At night the deck watch officer will always have a quartermaster on the bridge to serve as lookout and assist in steering. In severe conditions he may independently issue orders to rotate lookouts periodically, calling out an extra man for this purpose even if it results in overtime work. In emergencies he is responsible for taking instantaneous action to deal with the problem rather than simply calling the captain to the bridge, although he is required to report the incident to the captain as soon as possible. For example, if a crewman falls overboard the watch officer must issue immediate orders for a Williamson turn designed to bring the vessel back to the immediate area of the missing seaman. Crewmen who fail to follow his lawful orders are subject to discipline, and in certain situations possible prosecution.

Generally, the master will have left instructions on the bridge to be called by the watch officer when the ship arrives at some predetermined point offshore set by the master as the vessel approaches port. The deck watch officer must also advise all department heads well in advance of port arrival or departure, in order that required preparations may be made. During maneuvering through the estuary and into port the master will normally be on the bridge and the chief engineer will be at his station in the engine room. However, the deck watch officer remains responsible for his watch in all respects and is specifically responsible for the successful completion of the arrival or departure checklist designed to prepare the vessel for any eventuality, as set forth in the Deck Fleet Policy Manual. The docking or departure of a supertanker is a time-consuming, slow, complex, and dangerous operation. If improperly done, an environmentally disastrous oil spill, or a fire and explosion may occur.⁹ Thus, although the same vessel and crew may be assigned to serve an area which requires it to frequently visit the same ports, variations in weather, tides, available dock facilities, and other variable factors, require the exercise of judgment based on their experience by the officers in charge of crewmembers' tying up, or untying, the ship. Normally, during docking, the master and the chief mate are on the bridge. The second mate directs the work of the stern gang, while the third mate and his work gang are on the bow. The officers on the bridge

⁹It is public knowledge that recently such disastrous spills have occurred in waters frequented by Respondent's vessels, and I take official notice of that fact.

are usually not in a position to see the docking crews. Consequently, pursuant to radio instructions from the bridge, the second and third mates will supervise the tying up or untying process. Docking is much more dangerous than undocking, because in the docking operation the tanker is approaching the dock. Only the second and third mates, in directing the work of their crews, issue specific orders to them, which result in carrying out the general instructions from the bridge. Improper line handling can cost a crewman a hand or an arm, and may endanger the ship.

Loading and discharging cargo in port is performed pursuant to a plan devised in each instance by the chief mate and approved by the captain. The order in which the various tanks in the vessel are loaded or discharged is critical to the structural integrity of the vessel and its stability in the water. Since Respondent's tankers frequently carry a variety of grades of highly volatile cargo, the planning for loading and discharging is critical to the successful completion of these dangerous operations.¹⁰ Frequently, the master and the chief mate will both be ashore on other company business while the lengthy loading or unloading process proceeds. Thus, the officer on watch is often left completely in charge of these operations for substantial periods of time and must utilize his independent judgment. Constant adjustments and changes with respect to hoses and lines onto the dock must be made in accordance with variances in tides, weather, and loading rate. During such times he will issue orders to the three crewmen assigned to his watch, directing their work and supervising their activities. He also directs the work of the pumpmen in those vessels not having a cargo control room, and exercises his authority to call out additional crewmembers if needed. He issues instructions concerning the opening and closing of valves, measuring ullages, levels of cargo in the tanks, and directs the topping off procedure. He oversees tank cleaning operations, and the monitoring of the CO₂ venting system. He is responsible for shutting down, loading, or unloading operations on the approach of an electrical storm or in the case of a spill. If a spill occurs he is responsible for instituting and directing immediate action to contain it and clean it up. The mere reporting of a spill or other problem to the chief mate or the master does not relieve the watch officer of his responsibility to handle the situation in a proper manner and to issue the appropriate corrective orders. He has the authority to call out additional manpower off-watch in spill situations, thereby committing the Company to extra pay for these men. Even when the captain and the chief mate are aboard, the watch officer still maintains overall responsibility for the loading and discharging of cargo during his watch in accordance with the loading or unloading plan, and in a safe manner. He has the ultimate authority to suspend cargo operations if, based on his experience and training, he deems it necessary to avoid any danger.

2. The responsibility of the engine watch officer

Although the chief engineer is ultimately responsible for all maintenance and needed repairs in the engine room, and at times may personally supervise a major repair, he normally is not present in the engine room. While the chief engi-

neer will visit the engine room at least once a day, his visits are brief, generally confined to the engine control room, and usually involved consultations with the officer on watch. Instead, most of his time is spent performing an enormous amount of paperwork in his office elsewhere in the ship. His primary responsibility is to establish priorities for the performance of planned maintenance, which he passes along to the first assistant engineer in the form of daily worklists. The actual day-to-day operation of the engine room is the main responsibility of the first assistant engineer. He and the other engine watch officers are responsible for the safe and efficient operation of the engine room during their respective watches. Although the chief engineer makes certain daily work assignments and makes cleaning station assignments to oilers and wipers, these unlicensed crewmen are required to assist and follow the directions of their watch officers as needed. The engine room of an oceangoing tanker is an extremely large area containing multiple levels or decks. Thus, it is simply not possible to keep all the complex machinery under observation all the time. Consequently, the watch officers and the oilers make rounds monitoring the equipment and making necessary adjustments, opening and closing valves, and starting and stopping motors. The oilers serve as the watch officers' chief assistants in performing this multiplicity of functions. The watch engineer tells the oiler what to do and when to do it. When the watch officer and the oiler perform planned maintenance together, the watch officer directs the oiler's work. If equipment malfunctions and an emergency repair becomes necessary, the watch officer is expected to act independently, and to take immediate corrective action assisted by the oiler to whom he gives directions.¹¹ If an oiler's work is unsatisfactory, or his conduct becomes insubordinate, the watch officer may send the oiler from the watch and secure a replacement in order that the work may continue. The Company's Engine Policy Manual prescribes that "the engine watch officer has complete charge of the people on the watch and of the operation and maintenance of the machinery." Crewmembers report to the watch officer, and he in turn is responsible for seeing that they are fully employed at all times. Steam vessels have an oiler and a wiper assisting the watch officer during days, but just an oiler at night. At sea, pumpmen also perform work in the engine room. The fireman, employed on the *Western Sun*, also reported to the watch officer. In diesel vessels, such as the *New York Sun* and *Philadelphia Sun*, an oiler was employed on each watch. More recently, since October 1987, pursuant to Coast Guard approval, the Company has employed two automated oilers on each daytime watch. They likewise perform work directed by the watch officer. The watch officer is also responsible for ensuring that the wiper is performing the tasks assigned to him in a safe and efficient manner.

E. Other Functions Performed by all Watch Officers

1. The authority to authorize overtime

Under the terms of the expired labor contract, in the absence of an emergency, overtime work was prohibited unless

¹⁰In 1979, at Sun's terminal, an officer's failure to promptly shut down operations on the approach of a thunderstorm resulted in an explosion which destroyed the ship and lost the lives of 16 or 17 persons.

¹¹The record contains numerous examples of such situations, which occur not infrequently because of the complexity and the great number of the individual components in the engine room.

specifically approved by the master or the chief engineer. Even these officers' authority over overtime authorization is limited by the amount of overtime allocated to each vessel for each 80-day tour of duty. Home office approval is required to exceed the allocation. Therefore, a watch officer cannot work crewmembers overtime in order to perform regular day-to-day work or work not requiring overtime, without approval of his department head. Watch officers and crewmembers are required to keep account of their authorized overtime. Summaries are compiled and reports are submitted biweekly to the master from the department heads. Federal regulations require that crewmembers not work more than 8 hours per day unless "in the judgment of the Master or other officer" for the docking or undocking of the ship, work required for the safety of the ship, the cargo, or the crew, the saving of lives aboard another vessel in danger, or for emergency drills. Accordingly, watch officers do have and in fact exercise the authority to authorize and assign overtime, based on their independent judgment and interpretation of Federal and company regulations. The record contains examples where this has been done without first checking with the chief engineer, the first mate, or the master. Thus, the testimony of Captain Hopkins verified that the loading orders for the *Prince William Sound* emphasized that the mates should utilize this authority when necessary. Watch officers will most generally authorize overtime for cargo loading and unloading operations, emergencies, the replacement of an intoxicated or incapacitated member of their watch, or the failure of an employee to report for a scheduled watch. More often than not, they will exercise their authority to make the adjustment, and then only later report the facts to their superior.

2. The watch officer's role in discipline

As in all other facets of a vessel's management, the master has the responsibility for maintaining discipline. In turn, the department heads bear subordinate responsibility for the maintenance of discipline in their respective departments. The provisions of the Respondent's Deck Fleet and Engine Fleet Policy Manuals, which confer this responsibility, also require department heads to promptly and fairly report breaches of discipline to the master. While in port, second and third mates are "responsible for the close supervision of the crew and for maintaining discipline" and must "report any breaches of discipline to the Chief Officer or Master" In the engineroom watch engineers are specifically reminded concerning their responsibility for maintaining discipline at sea and in port, and must promptly report disciplinary infractions to the chief engineer. Watch officers are responsible for discipline on their watch. It is a serious offense for an unlicensed crewmember to disobey the watch officer. Insubordination constitutes grounds for discharge from the vessel, as does leaving or failing to report for a watch or reporting for a watch in a condition (other than illness) which has rendered the crewmember unfit for the performance of his duties.

The Company has a dual level disciplinary system. Thus, discipline on the vessel begins when the watch officer decides that an infraction of the Respondent's rules of conduct has occurred. Using his own judgment, the watch officer decides whether the individual should be orally reprimanded, reported to the department head, or immediately removed

from the watch. If, in his judgment, removal is warranted, the watch officer exercises his authority to have the person replaced even if overtime work results. In the case of a minor infraction, the watch officer may simply orally reprimand the employee, and give him a second chance, or he may decide to make a formal recommendation to his department head for the issuance of a written warning. He likewise has the authority and does on occasion dispense written warnings himself. The written warning may carry with it the watch officer's recommendation that the individual be discharged from the vessel. While recommendations for severe discipline usually result in a conference participated in by the master, the department head, and the watch officer, there is no substantial evidence in the record indicating any degree of frequency involving the overruling of a watch officer's recommendation, since he is the person who observed the infraction. There is evidence that the master and the department head almost invariably accept the watch officer's recommendation. A written reprimand or disciplinary slip discharging the crewman from the vessel is usually drawn up by the department head, although at times it is prepared by the watch officer himself. Written reprimands are signed by the master, the department head, and the disciplined employee. Usually the watch officer will sign the reprimand in a block marked "Witness," although in at least one instance in the record the reprimand was witnessed by an unlicensed crewman. A disciplinary meeting is held for the sole purpose of announcing the discipline imposed. Where that action consists of a discharge from the vessel, generally, the employee leaves the ship only at the next port. In the meantime, the captain decides whether the dischargee will be permitted to work in the interim. If a watch officer insists that the disciplined person not return to his watch, the master and the department head will usually accept the watch officer's recommendation. Discharge from the vessel carries with it the consequences of immediate loss of pay on leaving the ship, and the additional burden of paying for the travel expenses to return home. Furthermore, discharge from the vessel carries with it the automatic prohibition against returning to that ship for 1 year.

The second level of discipline emanates from the fleet manager through his department of human resources. All written reprimands and documents reflecting discharges from the ship are forwarded for review by this organization. Copies are placed in the individual employee's personnel file. Reprimands are reviewed by the fleet staffers, who will consult with Manager Simmons only in cases where the employee is a repeat offender or, in their view, should be counseled. In such instances Simmons will interview the employee to determine what, if any, further measures are needed. If, in his view, additional action is warranted, he will make a recommendation to Fleet Manager Bates who has final and complete authority concerning termination from the Company. Likewise, Simmons' organization even more carefully examines discharges from the vessel. In such cases an independent investigation is conducted, following which a decision is made concerning whether or not further discipline is warranted. Such additional action may involve 30- or 60-day suspensions or, the ultimate sanction, discharge from the Company. Except in the case of the most serious infractions, discipline is almost always progressive. The human resources department's review of each matter carefully weighs and

considers the recommendations and recorded remarks of the watch officers. Finally, in addition to the record testimony of the witnesses, the exhibits contain selected accounts of over 40 instances of discipline by the watch officers.

F. Respondent's Evaluation System and the Watch Officer's Role in Evaluations and Promotions

The Respondent has an elaborate system of written evaluations of all of its employees. Licensed officers are appraised at the end of each tour when the officer leaves the ship. Deck officers are evaluated by the master after consultation with the chief mate. Second and third assistant engineers are presently evaluated by the first assistant engineer, but in the recent past had been appraised by the chief engineer with the first assistant engineer's input and recommendations. Examples of licensed officer evaluations are included in the record, and have been thoroughly considered. The significance of Respondent's system of licensed officer evaluations is enhanced by the fact that lower ranking licensed officers, as a part of their training, regularly sail on tours of duty in which they serve in the next highest capacity. Thus, for example, a first assistant engineer will regularly be given opportunities to sail as the chief engineer of a vessel. His performance in the higher capacity will, likewise, be evaluated. All of these evaluations are of great significance to Captain Bates' fleet staffers in Simmons' human resources department when a given officer is being considered for promotion. Indeed, it is fair to say that the chief value of these performance appraisals is their use in the area of promotion assessment.

Correspondingly, the unlicensed crew categories are also evaluated in writing. The Company's Deck Fleet and Engine Fleet Policy Manuals confer on masters, chief mates, and chief engineers the duty of evaluating unlicensed crewmen. As altered in May 1987, the engine manual permits engineroom crewmen to be evaluated by lower ranking engineering officers. Although at the time of the hearing the deck policy manual contained no such change, the record contains examples of evaluation forms completed by licensed officers other than the chief mate. There are two varieties of such evaluation reports. Probationary evaluation reports of unlicensed crewmen are to be completed during the 6-month probationary period of each new employee. These are submitted frequently during that time. Once the unlicensed employee becomes permanently employed by the Company, he is evaluated at the end of each tour of duty. Since only the watch officers have the opportunity to continuously and closely observe the performance of the oilers, wipers, and pumpmen with whom they work on the watch, the department head relies heavily on the watch officers' input and recommendation for completion of the employee's appraisal, in instances where the appraisal is actually prepared by the department head. Thus, Captain McKee testified that on vessels he commanded, the chief mate met with the watch officers and then prepared the evaluation after obtaining their opinion. General Counsel's witness, First Assistant Engine William Anderson, testified that he had prepared evaluations after having been told by the chief engineer that Anderson knew the men better. Chief Engineer Thomas G. Lewis stated that he usually has his watch officers prepare a draft evaluation for his use since they had had a better opportunity to observe the crewman's performance.

G. Discussion and Concluding Findings

A supervisor is defined by Section 2(11) of the Act as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." In his brief the General Counsel correctly notes that if the individuals whose status is claimed to be supervisory possess any one of the 2(11) indicia, they are supervisors, provided that they also exercise such authority through the use of independent judgment.¹² Essentially, the General Counsel and the Charging Party argue that the categories of licensed officers whose status is in issue here, are simply skilled employees whose duties are routine in nature and who simply implement or convey to others the oral or written orders of their superiors, which are in turn based on documented company policies and instructions. I disagree. In my view, the General Counsel's assessment is simplistic and his conclusion can be reached only by ignoring evidence which in some instances emanated from his own witnesses. Thus, testimony from witnesses on both sides of the case describe in detail how, when acting as watch officers, persons, acting in each of the capacities in issue, responsibly directed the work of those assigned to their watch in a manner involving the frequent use of independent judgment. The subordinates were required to follow their orders. Thus, Second Mate and Union President Clifford Twaddell conceded that in his most recent 80-day tour of duty in the capacity of second mate, he called the captain to the bridge only on one occasion.

Furthermore, even if a particular operation is performed again and again, it does not necessarily follow that it is routine. In recent months, the world has been painfully reminded in a series of highly publicized incidents of the fact that because of the size, complexity, and cargo which it carries, a supertanker is an extremely dangerous place to work. Constant monitoring and accountability is essential. Otherwise repetitive operations must be performed under constantly changing conditions which significantly vary the individual components of the operation and the order and the manner in which they are performed. Mistakes can and do result in disastrous consequences. In the words of Wayne Richard McKee, retired tanker captain and presently a marine consultant, "You just don't tell somebody to go open a valve and walk away from him. You watch that he opens the valve that you want him to open. If you're hooking up hoses, you don't just say go haul those hoses up. Each hose has a different connection they go to. You have to make sure that the gasoline goes to where you want the gasoline line connected . . . somebody has to be there to tell him what riser these hoses are going to go on."

Finally, while I am not convinced that the input of watch officers with respect to the evaluation process rises to the level of an effective recommendation, I am more than satis-

¹² Thus, the resolution of an issue of supervisory status is entirely dependent on analysis of its own peculiar set of facts. Therefore, although I have considered the many precedents cited by the parties in their briefs, I find none controlling.

fied that these officers do in fact make effective recommendations with respect to discipline. The fact that the department head may in many instances physically prepare the disciplinary forms, does not lessen the effectiveness of the watch officer's accepted recommendation. The evidence in the record clearly shows that in most instances, especially those involving severe discipline, the watch officer's recommendation is accepted. Therefore, I find and conclude that Respondent's second and third mates and first, second, and third assistant engineers possess attributes of supervisory status specified in Section 2(11) of the Act, and, thus, are supervisors. Accordingly, as recognized by counsel for the General Counsel at the outset of this proceeding, this determination is dispositive of the other issues in this case. Thus, the Respondent was free to make whatever changes it may have made in the wages, hours, and working conditions of these licensed officers, and a discussion of the unilateral changes alleged in the complaint is, under the circumstances presented, unnecessary. I find that the Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce as defined in Section 2(2), (6), and (7) of the Act.

2. The Charging Party, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent's employees occupying the classifications and positions of second mates, third mates, first assistant engineers, second assistant engineers, and third assistant engineers are each supervisors within the meaning of Section 2(11) of the Act.

4. The Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The complaint is dismissed.

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.